



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

The American Historical Review

EARLY RECORDS OF THE KING'S COUNCIL¹

THE early history of the privy council is a subject that has been left in much obscurity. This is largely because there have seemed to be no records of its acts and proceedings before the reign of Richard II. While much concerning the council of the fourteenth century may be gathered from various collateral sources, it has seemed to some that in the lack of more direct evidence our knowledge of the subject cannot be clear and definite.² It has been thought too that the council can not be considered a distinct and mature body before the beginning of its records. Says Dicey, "The conjecture is therefore natural that the council's acts were first accurately recorded when its existence as a separate institution was for the first time recognized."³ This time was understood to be the reign of Richard II., which has been taken as marking a special change in the council's development.⁴ Much therefore hinges upon the question when such records were actually first made.

The famous collection of Sir Harris Nicolas, entitled *Proceedings and Ordinances of the Privy Council*, contains for its first entry a record of the tenth year of Richard II. That the same eminent author and editor subsequently discovered two isolated instances of council minutes of earlier date, belonging to the years 1337 and 1341 respectively, which he presented in his *History of the Royal*

¹ The term *king's council* rather than *privy council* was generally used in the fourteenth and most of the fifteenth century.

² "Its history can only be traced in its proceedings and until those proceedings are collected and printed, he [the author] is persuaded that anything which could be written would be unworthy of attention, because it must be formed of speculations founded upon most imperfect premises." Nicolas, *Proceedings of the Privy Council*, Vol. I., p. vi.

³ Dicey, *Privy Council*, p. 25.

⁴ "The privy council, from the reign of Richard II. onwards, although it inherited and amplified the functions of the permanent council of Edward I., differed widely in its organization." Stubbs, *Constitutional History*, II. 274.

Navy,¹ has been generally overlooked. It would be strange indeed were these the only instances during a period of fifty years when minutes of the kind were made. Now a search among the archives of the Public Record Office reveals that there is an abundance of such material, not only of earlier date than anyone has stated, but also of later times, which have not been utilized. In view of their bearing upon the history of the council, it seems useful to give an account of these newly found manuscripts. They are of various kinds, corresponding to the different proceedings of the council.

The earliest and simplest form of record made by the council was in connection with the petitions, of which thousands were received. It is well known how suitors addressed petitions to the king and council seeking remedies which they could not obtain from the ordinary courts. The responses were made regularly upon the backs of the same strips of parchment, in words as few as possible. As the council did not usually try cases, the endorsements consisted of brief directions to the suitors, the judges, or the chancellor: to the effect that the parties should sue at common law, or in the chancery, that writs should be issued, that judgment be rendered, and the like. The response assumed greater length when a point of law had to be explained. Not that all of the numberless responses were actually made by the council, for there were hearers and triers of petitions appointed to do much of the work. But it is plain that even too much of the council's time was spent in the hearing of private petitions.

The function of the council in the way of receiving and answering petitions has been adequately described by the ablest writers.² This much, however, it is necessary to recall as furnishing a clue to the council's proceedings in other matters, for the process of petition and response was followed in all kinds of business, public as well as private. It was in a manner analogous to that followed with the small private petitions, that the council was accustomed to deal with state questions submitted to it. The usual form in which matters for the consideration of the council were stated, consisted of a series of articles, each article being a distinct petition or proposition. A characteristic title upon one document of this kind reads, *fait a remembrer des choses a monstreres au conseil nostre seigneur le Roi*.³ Such a document constituted a kind of *agenda*, which could

¹ Nicolas, *History of the Royal Navy*, II. 188-192.

² See Hale, *Jurisdiction of the House of Lords*; Maitland, *Memoranda of the Parliament of 1305*; and Stubbs, *Constitutional History*, II. 275.

³ Parliamentary Proceedings, Chancery, file VII, no. 19. The collection under this title in the Public Record Office is newly compiled, and contains much material, relating both to Parliament and to the council, which has not been available before.

be considered point by point. Upon the wide margins and between the paragraphs of such a parchment could be written the responses or decisions of the council to each point. In case the articles were accepted in their entirety the inscription was a simple matter.¹

It will illustrate a whole class of documents to describe one which belongs to the second year of Edward III.² In this John Darcy lays before the council a series of petitions in sixteen articles, stating the conditions upon which he is willing to go to Ireland as chief justice. He asks that certain men whom he names be placed in office as his associates; that the chief justice have powers of supervision over other officers; that he have the power to pardon for felony; that no grants in Ireland be made without consulting the justice and others of the council there; that it be granted by statute that all Irishmen wishing to use English laws be permitted to do so without having to buy charters for the privilege. The answers of the council are inserted between the lines and in the margins in a handwriting clearly different from the former. Most of the propositions were accepted with some modification. Some of the names suggested were scratched out and others substituted. As to the granting of pardons, it was answered that it seemed better that the power should not be exercised without consulting the king. As to the Irish freely enjoying English law, the justice was to get the opinion of the next Irish parliament. Other items were accepted with a simple *fiat*. The decisions thus reached were put into execution on the authority of "king and council," according to the attestations upon the letters of great seal that were forthwith issued.³

There is a document of the year 1311 which was one of a number coming from Gascony, perhaps having been drawn up in the king's council there, as others were.⁴ It consists of a series of articles, punctuated with the words, *item intimandum est*, *item consilium est*, etc., written in a provincial Latin strange to England. Most likely it was considered at the small council summoned at York for February 27, 1312, to confer on affairs of Aquitaine.⁵ The items in detail specify that the mayor and *jurati* of Bordeaux are increasing the taxes, that many officers commit excesses while the

¹ Upon one of the documents occurs the following marginal note in an unclerkly hand: *ceux articles sont lues devant le Roi et le conseil et sont acordez en touz pointz*. Parliamentary Proceedings, VII. 24.

² Parliamentary Proceedings, VI. 10.

³ *Calendar of Patent Rolls*, 2 Edw. III., p. 316; *Calendar of Close Rolls*, p. 312.

⁴ *Diplomatic Documents*, Chancery, p. 114. This is another file into which many of the council documents have fallen.

⁵ *Parliamentary Writs*, II. 71.

country is distracted by war, that commissioners with plenary powers should be appointed, that the castles of Bordeaux need repair, that in the law-cases pending in the court of the king of France subjects of the king of England should be treated fairly, and that for use in these cases evidence should be diligently sought for in the king's treasury. The responses of the council are written in a small cramped hand between the several paragraphs. Many of the questions were referred to the seneschal of Gascony, who was to act with the advice of the king's council of that part. Some of the answers are made with the additional confirmation, "*placet regi*," while in some instances it was required, "*informetur rex*." As in other cases of the kind, the responses were the basis for executive orders, the appointment of a commission to Paris being upon the close roll of the same year in accordance with the Gascon petition.¹

That the procedure which has been illustrated in the foregoing examples was followed in much the same way by the king's council of Gascony, there is evidence in a large document of the year 1320.² It contains certain petitions from Agen and other towns asking for various franchises and for reforms in the Agenais. The articles from the towns having been first submitted to the seneschal and council of Gascony, received certain amendments at their hands, which are incorporated in the manuscript.³ In this form they were sent to England, where they were submitted to the council, the responses being inscribed in the usual manner. All the petitions were accepted but one, about which there was to be further deliberation.⁴

Considering the documents as respects their form, the result was different when at greater length responses to petitions were rendered upon separate parchments. Of the year 1334 there is a voluminous petition coming from the seneschal and council of Gascony to the king and council in England, consisting of twenty-nine articles relating to the aggressions of the king of France.⁵ A short inscription on one of the pages describes how the answers of the

¹ *Calendar of Close Rolls*, 6 Edw. II., p. 488.

² Chancery Miscellaneous Rolls, 5/16.

³ How the petitions were treated is told in the document itself. (*Articulos*) quos dominus Guillelmus de Monte Acuto quondam senescallus Vasconie una cum responsionibus dictorum articulorum et avisationibus per ipsum et vestrum consilium illarum partium inde factis vobis remisit, et quos post modum vos remisistis sub pede sigilli vestri senescallo Vasconie et mandastis observari nuper responses eis factas, etc.

⁴ Postmodum exhibitis dictis articulis et diligenter examinatis visum est consilio quod poterunt confirmari salvo jure Regis excepto XX^{mo} de quo deliberaretur.

⁵ Chancery Miscellaneous Rolls, 5/22.

council were returned in a roll. "*As touz les pointz q touchent les articles desuzditz est respondu en le point entre en un roule sur lordenance faite par le conseil sur les ditz articles et articles suauntz.*" In this case, as in most others when the same method was followed, petitions and responses have been irrecoverably separated.¹

Sometimes, in a way that was followed also with the private petitions, transcripts were made from the original membranes considered by the council. The distinguishing feature of the transcript is that both petitions and responses are in the same handwriting. While the original responses were often written in an irregular, unclerly hand, the copies were made by a professional scribe. In these cases the entire manuscript is made by the council or by its direction. A good example of a state paper of this kind is one, dated March 24, 1318, which embodies a report from the bishop of Worcester which was sent to the council for its consideration.² In a number of articles in the usual form it gives an account of certain judicial processes which were being drawn into the court of France, involving ministers and other subjects of the king of England in Aquitaine. Some of the recommendations of the bishop, who had been one of the king's proctors at the court of France regarding these cases, were that an effort should be made to have a joint commission appointed by the king of England and by the king of France to deal with the cases in dispute; that penalties imposed on the appellants should not be exacted provided they would withdraw their appeals; that in regard to certain cases request should be made for delay in the hope of a permanent peace.

Throughout the period under review the method described, of petition and response, was the most usual mode in council proceedings. In some ways it is the most satisfactory kind of record, for it reveals more clearly than any other the steps by which the council came to its decisions. Better than any other does it distinguish the council from Parliament, for the process is totally different from anything shown in the records of Parliament. The document of petitions when completed with the responses was considered to be fully binding as an expression of the will of the king and council.

¹ There is a noteworthy set of responses sent to Gascony about the year 1314, bearing the endorsement, *avisamenta consilii Regis super quibus petitur tangens Regi*. (Diplomatic Documents, Chancery, p. 398.) There is a series of recommendations as to problems of Ireland, which contains no responses. (Parliamentary Proceedings, VII. 19.)

² It describes itself as follows. *Dominus T. dei gratia Wigornensis episcopus liveravit Elie de Jonestone infrascriptos articulos portendos dicto domino Regi, cancellario, et thesaurario suis et ceteris de consilio ad quos pertinet super hiis consulere et remedia adhibere*. Diplomatic Documents, Chancery, 250.

This was expressed with regard to a series of petitions received in the sixteenth year of Edward III. from the prelates and barons of Ireland. "The king ordained that these should be diligently examined by the council and answer made, to be written after each petition, and then the king commanded that the answers with the articles should have full force with the penalties contained therein."¹ The petitions, with the answers and ordinances made thereupon, were then sent back to Ireland to be observed.²

The method of petition and response, however, was not the only method of council proceedings. A different, though not necessarily a more mature, form was observed when the things agreed to were recorded in the shape of minutes or resolutions, without reference to any petition or address. Such minutes containing recommendations, ordinances, or drafts of ordinances, were written always upon single and detached membranes, usually in a series of brief articles, as in the previous examples, with a preference for the less formal French language rather than the Latin, and are indicated by phrases like *fait a remembrer que, accorde fust par le conseil*, or *avis est de conseil*. In some cases the appearance of the writing suggests that the articles were put down at different times, as the decisions were made, and sometimes space is left for more.

It is remarkable that some of the earliest records of the council should be of this kind. Thus there is an ordinance, apparently of the ninth year of Edward I.—*accorde est par le Roi e par sun conseil*—protecting from legal liabilities those who were going on service to Wales.³ Of the year 1299 there is a very clear record of an act, stated to be *ordinatum per Regem et consilium suum*, awarding sums of money to various Gascons who had lost their lands in the king's service. The document is remarkable in that it gives the names of the councillors, six in number, who were responsible for the measure.⁴ Of the same general form is an ordinance by the council, of the twenty-fourth year of Edward I., called "*de statu religiosorum de potestate regis Francie*," which relates to alien priories, forbidding them to exist within thirteen miles of the sea or other navigable waters.⁵

In the first and second years of Edward II. there are some notable ordinances relating to the government of Scotland, directing appointments to offices, salaries, military equipment, and like matters.⁶ A

¹ *Calendar of Close Rolls*, 16 Edw. III., 508.

² *Ibid.*, 516.

³ *Parliamentary Proceedings*, I. 21-30.

⁴ *Chancery Miscellaneous Rolls*, 5/5.

⁵ *Parliamentary Proceedings*, II. 22.

⁶ *Diplomatic Documents*, Chancery, 217 and 809.

great many of the proceedings relate to Ireland. Of the sixteenth year of Edward III. there is the draft of an ordinance concerning the government of Ireland, which claims to be merely the "advice" of the council.¹ The extended and completed ordinance may be found upon a printed roll of the same year.² A larger number could be produced relating to Gascony.

Of small instruments which are merely the drafts of single orders made by the council or with its sanction, to be issued as letters under the great seal, there exists an indefinite number.³ If it be thought that the memoranda here described may have been written by some councillor for his personal use rather than by the council's own direction, there is sufficient proof to the contrary in occasional statements upon the membranes, such as *le conseil ad cy escrit son avis* and *cestes notes furent faites par le conseil*.

The manner of record thus described, of ordinances and resolutions, is less distinctively of the council than the former one of petitions and responses. The same general form was followed in the ordinances of great councils and parliaments. From the words *ordinatum est per consilium* alone one cannot tell which council is meant. It is clear and satisfactory only when the names of the councillors who drafted or assented to the acts are given. In the fourteenth century this was not commonly done. Under Edward I., strange to say, the names were stated more frequently than in the next reigns. In the later years of Edward III. the practice began of appending the names to the memoranda which passed the council. This became the regular way by which acts of the council were authenticated. In no case, however, during the reigns of Richard II. or Henry IV. were the names written as signatures; they were inscribed in the same hand as the rest of the manuscript, without doubt by the clerk.⁴ In 1422 it was enacted that the clerk of the council should write the names.⁵ It was about this time that signatures appear. In 1424 it was enacted that "the names of thas-senteurs be writen of their own hand."⁶ The ordinances of 1426 were said to have been subscribed by the lords of the council with their own hands.⁷ The earliest instance that the writer has hap-

¹ Parliamentary Proceedings, VII. 13.

² *Calendar of Close Rolls*, 16 Edw. III., 508.

³ A schedule of council orders, on matters relating to the war with France and Scotland, may be found in Chancery Miscellaneous Rolls, 1/20.

⁴ It is necessary to explain this point in detail, for a quite wrong impression has been given by Nicolas, *Proceedings of the Privy Council*, II. xxvi.

⁵ *Ibid.*, III. 18.

⁶ *Ibid.*, 150, 216.

⁷ *Per dominos de consilio suis propriis manibus se subscribentes*, *ibid.*, III. 221.

pened to find of autograph signatures by the members of the council occurs in the second year of Henry VI.¹ As most of the council records of that time now remaining are transcriptions, it is impossible to say how generally this practice was followed.²

Taking now into consideration the council memoranda of whatever kind, whether responses or resolutions, it is a further step to inquire for what purpose they were made and how they were used. Now and again one finds a suggestion upon a bill to the following effect: *ceste bille fut livere depar le Roi et le conseil et sur ceo fut bref fait*.³ To be carried into effect it was necessary for the orders of the council to be embodied in letters or writs either of the great seal or of the privy seal.

Letters of privy seal were the most direct means of expressing the will of the king or of the council, the keeper being one of the most constant attendants. Some of these bear the stamp of the council's sanction by the conventional attestation, *per consilium*. Many of them, however, bear evidence of being written in the council or by its direction. There exist a number of writs of privy seal that are warrants directed from the council to the chancellor for the issue of letters of the great seal. Council warrants are on file beginning with the fifteenth year of Edward III.,⁴ although here and there are earlier ones to the same effect. As these writs invariably bear the date and place of the council's action, and are more likely than other notes to give the names, they have a special value as records.

Letters of the great seal, including letters close and patent, were used for the more formal administrative orders. Sometimes upon a council paper one finds a statement like the following: *Cestes notes deinz escrites furent faites par le conseil le Roi et mandees a la chauncellerie pour engrosser*.⁵ From notes of the council, whether an endorsement of a petition, a writ of privy seal, a memorandum, or other communication, the chancery issued the letters desired. This is the meaning of the recurring phrases of attestation to be found throughout the calendars of close rolls and patent rolls, *by council*, *by petition of council*, and the like. A comparison of letters of the great seal, such as are given in the printed rolls, with writs of privy seal and other council minutes, shows that with the neces-

¹ British Museum, Cotton MSS., Vespasian, C. XIV. 246.

² Other examples of signed council memoranda of the fourth year of Henry VI. are: Public Record Office Museum, Pedestal 15; Cotton MSS., Cleopatra, IV. 26, 27, 28, 30, 32.

³ Warrants Privy Seal, 19 Edw. III., file 1538.

⁴ Warrants Privy Seal, files 1538-1548.

⁵ Parliamentary Proceedings, VII. 13.

sary change of form, with the addition of explanatory phrases, and with the greater redundancy of official Latin, the chancery faithfully reproduced the data of the original draft. That the clerks of the chancery were expected to fill in the minor details is many times stated upon the original memoranda, which say, "as is more fully contained in letters patent." Particularly as to the dating, it is important to observe, the letter close or patent gives not the date and place of its own issue, but those borne upon the letter of privy seal or other previous draft. Thus the letters of the great seal are an indirect or secondary record of the council proceedings, but are not on this account the less useful.

Upon one of the council ordinances is an inscription that it was delivered to the keeper of the rolls of the chancery to be enrolled.¹ Certain it is that a large number of council ordinances are to be found upon the various chancery rolls, including the close rolls and the patent rolls, the Gascon rolls, the parliament rolls, and others. The same is true of enrollments in the exchequer. Upon one of the memoranda rolls it is told how the treasurer, delivering an ordinance of the council, directed it there to be enrolled.² Here and there throughout the rolls of Edward I. are to be found small membranes, which are original memoranda of the council. Upon one of them is the statement: *ista cedula liberata fuit per cancellarium in pleno consilio apud Evesham in cancellaria inrotulanda*.³ Instead of being transcribed they were merely attached to the roll. That the council could thus command the rolls of the chancery and of the exchequer is a reason why it did not have a roll of its own.

The records of the action of the council, then, appear in as many as four stages:

1. The original memoranda of the council, the chief purpose of which, as appears in this connection, was not to form a record, but to serve as drafts for the ensuing letters and enrollments, and for the practical use of the officers and clerks who had to follow them. For this reason they were made often in duplicate, and in one case at least there were as many as ten copies issued;⁴

¹ *Et memorandum quod tertio die Augusti anno regni Ricardi secundi secundo ista cedula liberata fuit per consilium . . . custodi rotulorum cancellarie predictae inrotulanda.* Parliamentary Proceedings, IX. 8.

² In the Memoranda Roll K. R. of the Exchequer, 3 Edw. II., Trinity term, is the following entry: *Memorandum quod Johan de Sandale thesaurarius liberavit hic septimo die Augusti hoc anno quandam ordinationem factam per Regem et consilium suum super compto garderobe . . . et eam precepit inrotulari in hec verba*, etc.

³ Close Roll, 29 Edw. III., m. 14.

⁴ Parliamentary Proceedings, I. 21-30.

2. The writs of privy seal, some of which might be classed with the former;

3. Letters close and patent, which are the most available of all sources, calendars of them having now been in large part printed;

4. Lastly, when a final engrossment was desired, the enrollments upon one or more of the rolls in the custody of the chancery or the exchequer. It is important to show this connection, for the original minutes are mostly lost, having served their purpose for the time being; while upon the rolls may still be found most, if not all, that is important of the acts of the council.

In this light we can understand the request of the commons in the twenty-seventh year of Edward III., when they asked that certain articles of the ordinance of the staple should be rehearsed at the next Parliament, "inasmuch as the ordinances and agreements made in councils were not of *record*, as if they had been made in Parliament." The king answered that they should be rehearsed in Parliament and put upon the roll.¹

Other documents there are, some written by the council, others pertaining to the council, which are not so directly converted into administrative orders. Those which reveal the relations of king and council are interesting as giving a certain individuality to that body. There is preserved a large amount of official correspondence that went on between the king and council, at times with daily frequency. Letters from the king to the council appear as early as Henry III., while letters from the council to the king are seen in the reign of Edward II.² Messages of the king ask for the immediate consideration of a petition or some other memorandum which he sends; letters of the council report what has been done and ask for special mandates or information when they are in doubt.

As a kind of *agenda* for the consideration of the council, in the sixteenth year of Edward II. the king sent a series of articles, the first of which proposed the drafting of a statute for the repeal of the ordinances of 1311.³ In conclusion it reads, "and be it known that the king wishes that each sage of his council consider these points, that they may amend the law for the profit of the king and the people; that they submit their agreement in the form of a statute or make some other remedy if it will suffice, and that such thing should be put into form in order that he may be advised before the Parliament the more readily to deliver to the people who come to Parliament." A clearer statement of the function of the council in devising the legislation of Parliament could hardly be made.

¹ *Report on the Dignity of a Peer*, VI. 323.

² *Ancient Correspondence* in 58 volumes.

³ *Parliamentary Proceedings*, V. 10.

In many of the council notes it is evident that the council is acting apart from the king. Sometimes upon petitions there are double inscriptions, the first being the opinion of the council stated conditionally, *s'il plect au Roy*; the second bearing the approval of the king, *il plect au Roy*. Receiving a series of petitions from Ireland the council answered most of the items, but in one case the response was, *soit parle au Roi de ce point*.¹ A set of council ordinances made in the conditional form—*il semble au conseil sil plect au Roi*—contains answers of the king in side notes.²

One of the most interesting of all the council papers is one of the year 1339, which is a transcription of certain messages that have passed between England and Flanders. It is entitled, "Articles reported to the chancellor, treasurer, and others of the king's council in England . . . from the king across the sea and the responses to the same articles."³ The document is plainly one made in the council, and not, as certain others were, a parchment sent from outside receiving the marginal notes of the council. The messages from the king, who was at war, express his disappointment that he has not received enough of the revenues and supplies, while the answers give the explanations of the council that they have done their duty. In this way some information may be gathered about the state of the taxes of that year, especially as to that very remarkable subsidy of 1338 when the king was granted the pre-emption of 20,000 sacks of wool at a fixed price. The management of this levy, it may be said by the way, had devolved entirely upon the council, and was turning out to be far from successful. Regarding the 20,000 sacks of wool, the king in his message complained that of the assignments already made not one half had come to him; the council answered that as to this and other things they were sending messengers to explain, and asked the king to consider some facts contained in a certain schedule to be sent. The king said further that he would like an explanation how certain parties to whom assignments of wool had been made had not only failed to receive them, but had found their assignments to be repealed and changed. The council replied that some of the assignments in question they had delivered and that none had been repealed or changed without the king's command. Most of all did the king complain of the corrupt and faulty methods of the levy, by which inferior wool of light weight and not marketable had been sent him; the council

¹ Parliamentary Proceedings, VIII. 27. Similar forms are in Diplomatic Documents, Chancery, p. 114.

² Chancery Miscellaneous Rolls, 1/20.

³ Parliamentary Proceedings, VII. 7.

claimed to have done their duty by providing in their commissions and writs against these very evils. Certain petty financial devices suggested by the king, such as the repeal of some assignments and the recall of ministers' fees, were pointed out by the council to be quite impracticable. Altogether the relations here revealed amount almost to an altercation.

As an example of a message sent by the council to the king, there is one of the seventeenth year of Edward III., bearing the following inscription: *Ces sont les articles baille a William de Edington pur monstrier a nostre Seigneur le Roi de par son conseil.*¹ Conversely to the document just mentioned, it contains certain propositions of the council with the answers to each given by the king.

The council being a body which carried on negotiations, whether with private parties like merchants, or with foreign princes, there are not a few records of proceedings of this kind. Of the agreements which were reached by the council on the one hand and the ambassadors or merchants on the other, the most suitable form was the device of the duplicate parchment known as the indenture. Instances of original indentures are to be found from the time of Edward I. How in the twelfth year of Edward II. ambassadors of the count of Flanders came to a parliament at York and treated with the council there as to certain damages sustained by the people of Flanders as well as by the people of England by certain depredations at sea, is described in an indented parchment as follows: *fait a remembrer qe come avant ces heures trete fut entre le conseil le Roi Dengleterre et certains messengers le Conte de Flandres . . . les quex messages vindrent au dit Roi a son parlement a Everwik . . . et reherse entre le conseil le dit Roi et les ditz messages, etc.*²

As an instance of the very many contracts or agreements that were made between the king or his council and the merchant companies, there is the original note of an assignment of wool to the Bardi and Perucchi in the twelfth year of Edward III.³ The document itself explains how the agreement, which was made with the advice of the council, having been amended in certain points by the king's secretary, was delivered to the chancery, where it was engrossed in the same form. As in the case of other minutes, most

¹ Parliamentary Proceedings, VII. 15.

² Diplomatic Documents, Chancery, p. 143.

³ Parliamentary Proceedings, VII. 8. The following words occur in an endorsement, such as was frequently used to describe the purport of a document: *Fait a remembrer que ceste note entre Seigneur le Roi et les marchands de Bardi et Perucchi fust fait par lavisement du conseil et puis amenda en ascunz pointz par Mons. Geoffrey Lecrop et livere en chauncellerie pour engrosser et est engrossé sur mesme la forme.*

of the original indentures are lost, but a very large number may be found inscribed after the same manner upon the rolls of the chancery.

Of documents which were not made by the council, but which relate to it and are useful as affording sidelights, brief mention may be made of certain exchequer accounts of expenditures. Among the fragments of exchequer memoranda, for the most part ill preserved and hardly legible, are the accounts of the fees and wages of councillors.¹ In cases where it was a matter of daily wages, at the rate of 10s. or 20s. a day, detailed statements are given of the very days and places in which these men served or attended the council. The earliest of such accounts is that of Master Andrew de Offord, of the twentieth year of Edward III.² Another series of special accounts relates to the *jantacula* or breakfasts, which were served to the council at times in order that its sittings might be prolonged.³ These accounts give a list of all the provisions purchased, including ale, wine, bread, meat, fish, game, vegetables, spices and sweets, with the prices of each. The cost of such entertainment, while varying from twenty to one hundred shillings a day, was on the average about sixty shillings a day.⁴

Returning to the council records, there remains a word to be said as to how they were kept and how they are now to be found. As yet in the fourteenth century the council was deficient in that it did not keep a regular roll of its proceedings, as did Parliament and each of the common-law courts. Unless its acts appeared upon such a register, they were not in a technical sense considered matters of record at all. What then became of the bills, memoranda, indentures, letters, and other loose parchments which were used by the council? As is well known, there were two main repositories of government muniments, the exchequer and the chancery. Council membranes are to be found in each. In general one may say that those which passed through the office of the privy seal were handed over to the exchequer for safe keeping, while those which were used for orders of the great seal were given to the chancery. As the original files in these departments have been quite broken up it is not possible to say much about them. One reads, for instance, how bundles of letters and other instruments were delivered by the council to the exchequer, where they were put in a

¹ Exchequer, K. R., bundle 96, Nos. 1-7.

² *Ibid.*, 96/2.

³ *Ibid.*, 96/8-13.

⁴ Of the information contained in these accounts I have made further use in an article to be printed in the *English Historical Review* for January, 1906.

chest with a special mark for identification.¹ It is possible that in the case of many of the memoranda, which were only for temporary use, no effort was made for preservation. At any rate, the loose parchments were easily scattered, stolen and lost. Some of them fell ultimately into the hands of private collectors. The few and only proceedings now in print for the reign of Richard II. were taken from a collection of this kind, namely, the Cottonian Library.² There are, however, council proceedings for this reign and afterward which are not embraced in that publication. That council records have seemed to begin with the tenth year of Richard II. is therefore a mere accident of collection.

Those which remain in the government's custody are to be found among a half-dozen or more files of the Public Record Office, where they are listed not as council records, but according to their subject-matter. The modern rearrangements and classifications have tended the more to scatter the documents. Taken out of their setting, with responses apart from petitions, and even with one half parted from the other, one does not always have the means of identifying these stray parchments. If internal evidence be lacking it can be done only by dint of search for a companion document, such as may most likely be found with the aid of an index of petitions or letters of the great seal.

Not until 1421 was the register known as the Book of the Council begun, which was compiled by copying the minutes upon a regular roll.³ The original method, however, of making notes upon loose membranes still continued, and many of these are extant. From them it is plain that the Book was not intended to contain all of the proceedings. A comparison of a few of the memoranda of the reign of Henry VI. with the corresponding entries in the Book of the Council makes it clear that the transcription might be only an abstract of the real minutes. Only fragments of the Book are extant, but it is evident that it was a very imperfectly kept register. There is very good reason to believe that there are other records of the council still undiscovered, which may be hidden in one library or another.⁴

¹ *Antient Kalendars and Inventories of the Exchequer*, 38-41 Edw. III., passim.

² These archives therefore happen to be in the British Museum, instead of in the Public Record Office, where they would properly belong.

³ Described in Nicolas, *Proceedings of the Privy Council*, Vol. II., pp. xxvi et seq.

⁴ There are the two memoranda of the years 1339 and 1341 translated in Nicolas, *History of the Royal Navy*, Vol. II., pp. 188-192. That the author does not state where the original manuscripts are to be found has puzzled others, as well as myself. My search for these, however, has been rewarded by finding many others of the same kind.

Finally what is shown by these records concerning the development of the council itself? Enough has been said within the limits of this paper to show that certain current views regarding this body must be modified. So far as the records of council proceedings show, there was no considerable organic change during the reign of Richard II. Comparing the memoranda of that time with those of the earlier period there is no particular difference to be observed, beyond the growth of an institution already mature. Of new historical material the minutes of the council will probably not furnish much, for the same data may generally be found elsewhere. What is of more value than the miscellaneous subject-matter which they contain, is the clearer understanding that the original records give of the steps of council procedure. They are perhaps most serviceable in showing how the acts of the council came to find place upon the various rolls of the chancery and the exchequer. They reveal also, what is partly understood already, a power working with great persistency in legislation and administration,¹ which it would be no exaggeration to call the mainspring of the government. They show, moreover, that the usual working council, the *consilium ordinarium*, as some have called it, consisted of a very small number of men. No wonder it roused the jealousy of Parliament and particularly of the House of Lords, which sought in various ways to curb its powers!

JAMES F. BALDWIN.

¹ The functions of the council in judicial proceedings, about which more is generally known, I have held for the present in reserve.